Governance Practices for IPO Companies: A Davis Polk Survey

July 11, 2018

An initial public offering is a key inflection point for a company, not least because it often triggers the opportunity to review and replace the company's corporate governance structure. In place of complex contractual shareholder arrangements that are subject only to the constraints of corporate law, upon an IPO, a company adopts a more simplified governance structure that is subject to SEC and stock exchange listing standards. As the burden of obtaining shareholder approval to amend governance arrangements in the future is much higher for a public company, companies planning for an IPO often seek to establish a corporate governance structure which is as flexible as possible.

In the last few years, we have witnessed a sea-change in corporate governance among the largest U.S. public companies, e.g., those in the S&P 500, due largely to pressure imposed through shareholder proposals and proxy voting guidelines. Through increased pressure by shareholder activists and proxy advisory firms, these companies have been forced to abandon governance structures that are perceived to entrench control among a small group of holders and/or management, or which create barriers to more direct shareholder engagement. In recent years some of these same players have also put pressure on IPO companies and enacted policies meant to bring the governance of IPO companies in line with that of more mature public companies.

Despite these efforts, IPO companies have continued to adopt corporate governance arrangements in line with those of IPO companies in the recent past. This is because, generally, corporate governance does not seem to be a significant topic of discussion with investors during the IPO marketing process. As a result, we believe that IPO companies can continue to tailor their governance practices to align with similarly situated newly public companies rather than more established public entities.

In the last two years, perhaps the greatest debate around IPO companies' corporate governance has related to multi-class voting structures. While this has long been a topic of discussion, the Snap, Inc. IPO in March 2017 was the first in which only non-voting shares were offered to the public. This caused some controversy, following which the Council of Institutional Investors and others lobbied the major index providers to bar non-voting shares from their indices. In turn, global index providers S&P Dow Jones Indices, MSCI and FTSE Russell initiated market consultations to determine whether to revise their policies, and some have banned companies with multi-share structures from index eligibility. Debate has continued over whether these index provider moves will reduce opportunities to retail investors to access mutual funds that reflect the broader U.S. market – in particular depriving them of investment exposure to some of the most innovative companies in the U.S. economy. In the meantime, we have seen that almost 30% of IPO companies have two or more classes of common stock and unequal voting rights, although no company followed Snap's example of selling non-voting stock in its IPO. Given that index eligibility is often in the distant future for IPO companies and these companies can always collapse their structure in the future, many IPO companies continue to provide for founder-control, where beneficial to do so, despite these efforts.

We hope the enclosed surveys, one for companies that satisfy the stock exchange criteria for "controlled companies," and one for "non-controlled companies" are useful to companies considering various governance arrangements to adopt in connection with their IPOs.

Access survey results excluding controlled companies

Access survey results for controlled companies only

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Alan F. Denenberg	**650 752 2004**	**alan.denenberg@davispolk.com**
Joseph A. Hall	**212 450 4565**	**joseph.hall@davispolk.com**
Sophia Hudson	**212 450 4762**	**sophia.hudson@davispolk.com**
Michael Kaplan	**212 450 4111**	**michael.kaplan@davispolk.com**
Richard D. Truesdell, Jr.	**212 450 4674**	**richard.truesdell@davispolk.com**
Byron B. Rooney	**212 450 4658**	**byron.rooney@davispolk.com**
Ning Chiu	**212 450 4908**	**ning.chiu@davispolk.com**
Melissa Glass	**212 450 4662**	**melissa.glass@davispolk.com**